IN THE COURT OF APPEALS OF IOWA

No. 0-720 / 10-0709
Filed November 10, 2010

IN THE INTEREST OF R.K.,
Minor Child,

J.K., Father,
Appellant,

J.H., Mother,
Appellant.

Appeal from the Iowa District Court for Dallas County, Virginia Cobb, District Associate Judge.

A mother appeals the termination of her parental rights to her child. **AFFIRMED.**

DuWayne J. Dalen of Finneseth, Dalen, & Powell, P.L.C., Perry, for appellant mother.

Thomas G. Crabb, Des Moines, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Wayne Reisetter, County Attorney, and Sean P. Wieser, Assistant County Attorney, for appellee-State.

Kayla Stratton, Des Moines, attorney for minor child.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

VAITHESWARAN, P.J.

A mother appeals the termination of her parental rights to her child, born in 2009. She contends (1) the State did not make reasonable efforts towards reunification, (2) the State failed to prove the grounds for termination cited by the district court, and (3) termination was not in the child's best interests.

I. The State is obligated to make reasonable efforts towards reunification of a child with his or her parents. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). The mother contends the State violated this mandate by not affording her visitation with the child in her home. We disagree.

R.K. was removed from the parents' care after the Department of Human Services confirmed that his older half-brother had been physically abused. The mother admitted to having difficulty controlling her temper but declined to attend anger management classes arranged by the department. Nonetheless, the department afforded her supervised visitation with the child three times per week at a service provider's facility. Those visits were not moved to the parents' home partially because the home was unclean. At the termination hearing, the mother admitted she did not have the desire to keep the home clean because her children were not there.

The department also facilitated the provision of several other services, including a program called Parents as Teachers. The mother discontinued her participation in the program several months before the termination hearing.

Parsing the mother's reasonable efforts argument, it appears her real concern is with a visitation supervisor's decision to recommend the termination of her parental rights before receiving a bonding assessment from another entity.

That assessment does not assist the mother. The author of the report noted the absence of a "healthy attachment" between the child and the parents. Although the author indicated this was "likely a result" of the early removal of the child from the parents' care, she did not recommend anything more than regular visits "under normal stress conditions." Notably, the department continued to schedule tri-weekly supervised visits through the time of the termination hearing. The mother missed several of those visits.

We conclude the department satisfied its mandate to provide reasonable reunification services.

II. The district court cited two grounds for termination, Iowa Code section 232.116(1)(d) (2009) (requiring proof of several elements including proof that the circumstances leading to the adjudication continued to exist despite the offer or receipt of services to correct those circumstances) and section 232.116(1)(f) (requiring proof of several elements, including proof the child is "four years of age or older" and cannot be returned to the parent's custody). We may affirm if we find clear and convincing evidence to support either of the cited grounds. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We turn to the second cited ground, section 232.116(1)(f).

The mother contends this section is inapplicable because it requires proof the child is four or older and this child was only one year old at the time of the termination hearing. *See* Iowa Code § 232.116(1)(f). We agree this provision does not apply to R.K. We are convinced, however, that the reference to subsection (f) was simply a typographical error, and the applicable provision was subsection (f)'s counterpart for younger children, subsection (h). *See id.*

§ 232.116(1)(h). First, the court stated in its findings of fact that the child was born in 2009. Second, the court found "that the statutory grounds for termination have been met by the State as alleged in the petition." The petition made reference to section (h) rather than section (f).

We turn to the evidence supporting the contested element of section 232.116(1)(h), whether R.K. could be returned to his mother's custody. At the termination hearing, the mother was asked if she could take the next step and have the child returned to her care. She responded, "Yes, and no." She continued, "I mean right now or a week or so down the road, no. I think maybe in a few more months, I think there's still some things I need to learn about being a parent and taking care of a one-year-old."

The professional who supervised visits testified that while interactions between mother and child were "usually very positive," there was evidence the mother tired easily after interacting with the child, and, on one occasion, commented she was glad she did not have to listen to the child squealing all day. She also noted that the relationship between the parents was unstable and previous concerns about domestic abuse had not been alleviated. She opined, "I don't think it would be safe for [R.K.] to go back into the home." She further stated, "I don't know that services for [the child] would be followed through with."

A support worker who had interactions with the family twice a week seconded this opinion. She stated the most important concern she had was the family's follow-through with services.

A department social worker provided similar testimony, stating, "I think they have not been very prompt in getting into services." When asked whether in her opinion R.K. could be returned to the mother, she responded, "No."

The most telling testimony came from a clinical social worker and mental health director who worked with the mother in individual and couples therapy. When asked if he believed the mother was a good parent, he responded, "I don't know."

On our de novo review, we conclude the State proved by clear and convincing evidence that R.K. could not be returned to his mother's custody.

III. Termination also must be in the best interests of the child. *See C.B.*, 611 N.W.2d at 492. Recently, the Iowa Supreme Court articulated the following best interests analysis:

> In considering whether to terminate, "the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child."

In re P.L., 778 N.W.2d 33, 39 (Iowa 2010) (quoting Iowa Code § 232.116(2)). The record reflects that the mother consented to the termination of her parental rights to her older son, who experienced severe physical and mental abuse at the hands of his parents. The mother had not resolved the issues precipitating the abuse. Additionally, R.K. had a condition known as torticollis that caused him to move asymmetrically. In mid-2009, he was placed with a foster parent who had a nursing degree and who knew how to address this condition as well as the child's propensity to choke. Based on this evidence, we conclude the factors set

forth in Iowa Code section 232.116(2) supported termination of the mother's parental rights to R.K.

We must also consider the "exceptions" to termination set forth in Iowa Code section 232.116(3). *See id.* The mother does not argue that any of these exceptions apply.

IV. Finally, the mother argues termination should be deferred for six additional months to allow her to work towards reunification with the child. Most of the professionals who worked with the mother indicated that an extension of time was not warranted given the minimal progress the mother made up to the point of the termination hearing. While the mother's therapist provided a contrary recommendation, his testimony was equivocal at best. He said, if the child were returned to the mother's home, he would make surprise visits to the home. When asked if he was comfortable having the child returned to the mother's home under these conditions, he responded, "If I was really comfortable I would not be making the surprise visits, put it that way." We conclude a six-month extension was not warranted. We affirm the termination of the mother's parental rights to this child.

AFFIRMED.